MONTANA LEGISLATIVE HISTORY

Chapter 241 1991

Bill H 389 S _____ Original bill & history ✓C

| H. Committee on Human Services & Aging | | S. Committee on Judiciary | |
|---|---|---|---|
| Hearing Date(s) Feb01 | ✓C | Hearing Date(s) Mar05 | ✓C |
| Feb04 | ✓C | _____ | C |
| _____ | C | _____ | C |
| _____ | C | _____ | C |
| Date Out Feb05 | ✓C | Mar05 | ✓C |

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 389 INTRODUCED BY GOULD, ET AL.

AMEND HANDICAP DISCRIMINATION DEFINITIONS TO CONFORM TO FEDERAL LAW

BY REQUEST OF HUMAN RIGHTS COMMISSION AND DEPARTMENT OF LABOR

| | | | |
|---|---|---|---|
| 1/24 | INTRODUCED | | |
| 1/24 | REFERRED TO HUMAN SERVICES & AGING | | |
| 1/25 | FIRST READING | | |
| 2/01 | HEARING | | |
| 2/05 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/08 | 2ND READING PASSED | 89 | 1 |
| 2/11 | 3RD READING PASSED | 98 | 1 |
| | TRANSMITTED TO SENATE | | |
| 2/12 | FIRST READING | | |
| 2/12 | REFERRED TO JUDICIARY | | |
| 3/05 | HEARING | | |
| 3/05 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/06 | 2ND READING CONCURRED AS AMENDED | 49 | 0 |
| 3/07 | 3RD READING CONCURRED | 48 | 1 |
| | RETURNED TO HOUSE WITH AMENDMENTS | | |
| 3/16 | 2ND READING AMENDMENTS CONCURRED | 90 | 0 |
| 3/18 | 3RD READING AMENDMENTS CONCURRED | 98 | 0 |
| 3/23 | SIGNED BY SPEAKER | | |
| 3/25 | SIGNED BY PRESIDENT | | |
| 3/25 | TRANSMITTED TO GOVERNOR | | |
| 3/29 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 241 | EFFECTIVE DATE: 10/01/91 | |

HB 390 INTRODUCED BY REAM, ET AL.

ELIMINATE SALE OF SPECIAL WILD BUFFALO LICENSES

| | | | |
|---|---|---|---|
| 1/24 | INTRODUCED | | |
| 1/24 | REFERRED TO FISH & GAME | | |
| 1/25 | FIRST READING | | |
| 1/25 | FISCAL NOTE REQUESTED | | |
| 1/29 | FISCAL NOTE RECEIVED | | |
| 1/30 | FISCAL NOTE PRINTED | | |
| 1/31 | HEARING | | |
| 2/13 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/16 | 2ND READING DO PASS MOTION FAILED | 46 | 53 |
| 2/16 | SEGREGATED FROM COMMITTEE OF WHOLE REPORT AND PLACED AGAIN ON 2ND READING | | |
| 2/19 | 2ND READING PASSED AS AMENDED | 56 | 42 |
| 2/23 | 3RD READING PASSED | 55 | 45 |
| | TRANSMITTED TO SENATE | | |
| 2/25 | FIRST READING | | |
| 2/25 | REFERRED TO FISH & GAME | | |
| 3/12 | HEARING | | |
| 3/15 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/18 | 2ND READING CONCUR AS AMENDED MOTION FAILED | 24 | 25 |
| 3/18 | 2ND READING INDEFINITELY POSTPONED | 25 | 24 |
| 3/19 | RECONSIDERED PREVIOUS ACTION AND PLACE ON 2ND READING THIS DAY | | |
| 3/19 | 2ND READING CONCURRED AS AMENDED | 28 | 20 |
| 3/20 | 3RD READING CONCURRED | 30 | 20 |
| | RETURNED TO HOUSE WITH AMENDMENTS | | |
| 3/23 | 2ND READING AMENDMENTS CONCURRED | 74 | 25 |
| 3/25 | 3RD READING AMENDMENTS CONCURRED | 70 | 26 |
| 4/04 | SIGNED BY SPEAKER | | |
| 4/04 | SIGNED BY PRESIDENT | | |
| 4/05 | TRANSMITTED TO GOVERNOR | | |

HOUSE BILL NO. 389

INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

| | |
|---|---|
| JANUARY 24, 1991 | INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING. |
| JANUARY 25, 1991 | FIRST READING. |
| FEBRUARY 5, 1991 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 6, 1991 | PRINTING REPORT. |
| FEBRUARY 8, 1991 | SECOND READING, DO PASS. |
| FEBRUARY 9, 1991 | ENGROSSING REPORT. |
| FEBRUARY 11, 1991 | THIRD READING, PASSED. AYES, 98; NOES, 1. |
| | TRANSMITTED TO SENATE. |

IN THE SENATE

| | |
|---|---|
| FEBRUARY 12, 1991 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| MARCH 5, 1991 | COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. |
| MARCH 6, 1991 | SECOND READING, CONCURRED IN AS AMENDED. |
| MARCH 7, 1991 | THIRD READING, CONCURRED IN. AYES, 48; NOES, 1. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

| | |
|---|---|
| MARCH 16, 1991 | RECEIVED FROM SENATE. |
| | SECOND READING, AMENDMENTS CONCURRED IN. |

MARCH 18, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 389

INTRODUCED BY [signatures]

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

Yellowtail

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation.





BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is



INTRODUCED BILL
HB 389

required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.





(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.~~

~~(14)~~(13) "National origin" means ancestry.

~~(15)~~(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

~~(16)~~(15) (a) "Physical or mental handicap" means:

(i) a physical ~~disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device~~ or mental impairment that substantially limits one or

more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap.

~~(17)~~(16) (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its





nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(17)~~(16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

~~(18)~~(17) "Staff" or "commission staff" means the staff of the commission for human rights."

**Section 2.** Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

~~(3)--"Mental--handicap"--means--any--mental---disability resulting-in-subaverage-intellectual-functioning-or-impaired social-competence.~~

~~(4)~~(3) (a) "Physical or mental handicap" means:

(i) a physical ~~disability,-infirmity,-malformation,-or~~

~~disfigurement--which--is--caused--by--bodily--injury,--birth defect,-or-illness,-including-epilepsy.-It-includes--without limitation--any--degree--of--paralysis,--amputation,-lack-of physical--coordination,--blindness--or--visual---impediment, deafness---or---hearing---impediment,---muteness--or--speech impediment,-or-physical-reliance-on--a--guide--dog--for--the blind,--a--wheelchair,--or--any--other-remedial-appliance-or device~~ or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap.

~~(5)~~(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

~~(6)~~(5) "Qualifications" means such qualifications as are genuinely related to competent performance of the





particular occupational task."

-End-

CHAIRMAN--ANGELA RUSSELL
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: TU,TH TIME: 3:00 P.M.

SECRETARY-JEANNE FLYNN KRUMM

| --BILL NO--- | REFER DATE--- | HEARING DATE--- | CONSIDERATION DATES---------- | COMMITTEE ACTION---------- | REREFERRED TO COMM---- | DATE OUT- |
|---|---|---|---|---|---|---|
| HB0299 | 1/21 | 1/30 | | PASS AS AMENDED | APPROPRIATIONS | 2/12 |
| RICE, SHEILA | | | PROVIDE FOR PERMANENT PLACEMENT OF CHILDREN IN FOSTER CARE | | | |
| HB0325 | 1/22 | 1/25 | | PASS AS AMENDED | | 1/29 |
| SIMPKINS, RICHARD | | | EXPAND HOSPITAL DISTRICT TO INCLUDE HEALTH CARE FACILITY/EDUCATION BENEFITS | | | |
| HB0326 | 1/22 | 1/30 | | PASS AS AMENDED | | 2/04 |
| THOMAS, FRED | | | GENERAL REVISIONS TO THE DUTIES OF THE VETERANS' BURIAL SUPERVISOR | | | |
| HB0341 | 1/22 | 1/30 | | PASS AS AMENDED | | 2/04 |
| BRADLEY, DOROTHY | | | ALLOW LICENSED PHYSICAL THERAPISTS TO ADMINISTER CERTAIN TOPICAL MEDICATIONS | | | |
| HB0350 | 1/22 | | | | BUSINESS & LABOR | |
| PAVLOVICH, BOB | | | PROHIBIT HEALTH CARE PROVIDERS FROM REFUSING TO ACCEPT MEDICARE ASSIGNMENTS | | | |
| HB0355 | 1/22 | 1/30 | | PASS AS AMENDED | | 2/22 |
| O'KEEFE, MARK | | | INCREASE MANDATORY INSURANCE FOR DRUG/ALCOHOL ADDICTION; MENTAL ILLNESS | | | |
| HB0366 | 1/22 | 1/28 | | PASS AS AMENDED | APPROPRIATIONS | 1/29 |
| RUSSELL, ANGELA | | | APPROPRIATE MONEY TO FAMILY SERVICES TO PROVIDE SERVICES TO INDIAN CHILDREN | | | |
| HB0376 | 1/23 | 2/01 | | PASS AS AMENDED | APPROPRIATIONS | 2/04 |
| MESSMORE, CHARLOTTE | | | REQUIRE A STATE IMMUNIZATION PROGRAM TO PREVENT DISEASE AMONG CHILDREN | | | |
| HB0387 | 1/24 | | | | | |
| DAVIS, ERVIN | | | ESTABLISH COOPERATIVE CENTER FOR HEALTH STATISTICS | | | |
| HB0389 | 1/24 | 2/01 | | PASS AS AMENDED | | 2/05 |
| GOULD, BUDD | | | AMEND HANDICAP DISCRIMINATION DEFINITIONS TO CONFORM TO FEDERAL LAW | | | |
| HB0400 | 1/25 | 2/04 | | TABLED ON 02/18 | | |
| HANSON, MARIAN | | | PROHIBIT DISCRIMINATION IN AVAILABILITY OF PUBLIC MENTAL HEALTH SERVICES | | | |

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 52nd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON HUMAN SERVICES & AGING

**Call to Order:** By Rep. Angela Russell, Chair, on February 1, 1991, at 3:00 p.m.

## ROLL CALL

**Members Present:**

Angela Russell, Chair (D)
Tim Whalen, Vice-Chairman (D)
Arlene Becker (D)
William Boharski (R)
Jan Brown (D)
Brent Cromley (D)
Tim Dowell (D)
Patrick Galvin (D)
Stella Jean Hansen (D)
Royal Johnson (R)
Betty Lou Kasten (R)
Thomas Lee (R)
Charlotte Messmore (R)
Jim Rice (R)
Sheila Rice (D)
Wilbur Spring (R)
Carolyn Squires (D)
Jessica Stickney (D)
Bill Strizich (D)
Rolph Tunby (R)

**Staff Present:** David Niss, Legislative Council
Jeanne Krumm, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

## EXECUTIVE ACTION ON HB 326

**Motion:** **REP. MESSMORE MOVED HB 326 DO PASS.**

**Motion:** **REP. WHALEN** moved to amend HB 326. **EXHIBIT 1**

**Discussion:**

**David Niss** stated that this amendment is to make the language consistent with the version of the Uniform Probate Code that has

perceived problem and neither has REP. BRADLEY.

Vote: Motion carried unanimously.

## HEARING ON HB 389

**Presentation and Opening Statement by Sponsor:**

**REP. BUDD R. GOULD, House District 61, Missoula,** stated that the last Legislature passed the Americans With Disabilities Act in order to stay in step with the federal government. We need to change some language in the Montanan law. Because the Human Rights Commission is the Compliance Agency in Montana under section 504 of the Act, if there is a problem with a business or the University System, we can work out these problems on a one to one basis. If we have to deal with the Office of Civil Rights in Denver, Colorado, it is more difficult.

**Proponents' Testimony:**

**Anne L. MacIntyre, Administrator, Human Rights Commission,** submitted written testimony. **EXHIBIT 3.**

**Opponents' Testimony:** None

**Questions From Committee Members:** None

**Closing by Sponsor:** **REP. GOULD** closed on HB 389.

## HEARING ON HB 246

**Presentation and Opening Statement by Sponsor:**

**REP. THOMAS NELSON, House District 95, Billings,** stated that this bill established a mechanism to study bills that mandate health benefits so that Montana Legislators can make informed decisions with what these bills really present. This bill establishes a standardized, unbiased informational gathering system so that you as Legislators can make these decisions. In the last few years insurance agents have been handing out rate increases ranging anywhere from 15% to 50%. These rate increases on premiums for health insurance don't occur annually, they occur semiannually. Today health care costs more than $541 billion annually, which is more than 11% of our Gross National Product. More than 31 million Americans lack health insurance. Older Americans live in fear that a prolonged illness or staying in a nursing home can take out their whole life savings. Based with this escalating crisis, states have been increasing to expand the availability in health care. Recent proposals have ranged from tax credits for small businesses offering health insurance. Close inspection of the health insurance market place reveals that the problem is too much government regulation, not too little. Regulation of health insurance by state governments is causing millions of Americans to be priced out of the market for health insurance. In some

EXHIBIT 3
DATE 2-1-91
HB 389

Testimony of Anne L. MacIntyre
Administrator, Human Rights Commission
In support of House Bill 389
House Human Services and Aging Committee
February 1, 1991

The Human Rights Act was enacted in 1974 and was modelled after Title VII of the Civil Rights Act of 1964, as amended. In 1974, Title VII did not prohibit discrimination on the basis of handicap. In fact, the first major piece of federal legislation on the question of handicap discrimination, the Rehabilitation Act of 1973, had only just been enacted. The Rehabilitation Act, however, applied only to the federal government and contractors and grantees of the federal government. As a result, the Montana legislature in developing the Human Rights Act did not have any commonly accepted or developed definitions to look to in fashioning its prohibition against discrimination on the basis of handicap.

In the opinion of the Commission staff, the present statutory definitions are overbroad and inconsistent with federal law and should be amended to achieve consistency. Further, the statutes do not contain the specific statutory requirement of reasonable accommodation for handicaps contained in federal law. Although a reasonable accommodation requirement may be inferred from the present statutory language, the Commission believes a statutory clarification is appropriate.

The bill proposes to delete the statutory definitions of "mental handicap" and "physical handicap" in both chapters 2 and 3 of Title 49 and add definitions similar to the definitions contained in the Rehabilitation Act and the more recent federal enactments on handicap discrimination, the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990. Even though the Americans with Disabilities Act uses the term "disability" instead of "handicap", the other federal laws use the term "handicap", as the Montana law has done since 1974. Thus, we have not proposed to replace "handicap" with "disability."

The new definition of physical or mental handicap provides that a handicap is "a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of such an impairment, or a condition regarded as such an impairment." The term major life activities is used in the federal law to denote functions such as caring for oneself, walking, seeing, hearing, speaking, and working. Under the portions of the definition referring to "a record of such an impairment" or "a condition regarded as an impairment," a cured cancer victim or an individual with a disfigurement or a person who is erroneously regarded as having a condition like epilepsy would also be protected by the statute.

EX 3
2-1-91
HB 389

Finally, the bill includes a requirement of reasonable accommodation within the definition to insure that when discrimination on the basis of handicap is prohibited, the failure to make reasonable accommodation constitutes a discriminatory practice. In the employment context, reasonable accommodation can include making existing facilities readily accessible, modifying work schedules, job restructuring, reassigning to vacant positions, and so on. I understand that some concern may exist because the reasonable accommodation language proposed in the bill does not contain the "undue hardship" exception language provided in Americans with Disabilities Act. The Commission did not include this language in its draft of this bill because we did not believe it was necessary. We would not object to the addition of a sentence at the end of the subsection on reasonable accommodation to state: "Any accommodation which would require an undue hardship or which would endanger the health or safety of any person is not a reasonable accommodation." This should adequately clarify the matter to insure that we are not attempting to go beyond the federal law.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services & Aging COMMITTEE BILL NO. HB 389

DATE 2-1-91 SPONSOR(S) Rep. Budd Gould

**PLEASE PRINT PLEASE PRINT PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| R Budd Gould | Self | ✓ | |
| Anne MacDuffie | Human Rights Commission | — | |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 52nd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON HUMAN SERVICES & AGING

**Call to Order:** By Rep. Angela Russell, Chair, on February 4, 1991, at 3:00 p.m.

### ROLL CALL

**Members Present:**

Angela Russell, Chair (D)
Tim Whalen, Vice-Chairman (D)
Arlene Becker (D)
William Boharski (R)
Jan Brown (D)
Brent Cromley (D)
Tim Dowell (D)
Patrick Galvin (D)
Stella Jean Hansen (D)
Royal Johnson (R)
Betty Lou Kasten (R)
Thomas Lee (R)
Charlotte Messmore (R)
Jim Rice (R)
Sheila Rice (D)
Wilbur Spring (R)
Carolyn Squires (D)
Jessica Stickney (D)
Bill Strizich (D)
Rolph Tunby (R)

**Staff Present:** David Niss, Legislative Council
Jeanne Krumm, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

### HEARING ON HB 413

**Presentation and Opening Statement by Sponsor:**

**REP. MARY ELLEN CONNELLY, House District 8, Kalispell,** stated that the Denturist Association would explain HB 413.

**Proponents' Testimony:**

**Ron Olson, President, Denturist Association of Montana,** submitted written testimony. **EXHIBIT 1**

**John Mateskon, Vice President of Denturist Association of Montana,** submitted written testimony. **EXHIBIT 2**

Questions From Committee Members: None

Closing by Sponsor:

**SEN. NATHE** stated that this has been a very toughly negotiated and compromised bill. He urged passing as is.

## EXECUTIVE ACTION ON SB 54

Motion/Vote: **REP. CROMLEY MOVED SB 54 BE CONCURRED IN.** Motion carried unanimously.

## EXECUTIVE ACTION ON HB 389

Motion: **REP. MESSMORE MOVED HB 389 DO PASS.**

Motion: **REP. J. RICE** moved to amend HB 389.

1. Page 5, line 8.
   Following: the period
   Insert: "Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation."

2. Page 7, line 16.
   Following: the period
   Insert: "Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation."

Discussion:

**REP. STICKNEY** asked where the amendments came from. **REP. J. RICE** stated this amendment was mentioned by Ann McIntyre. This is the language that is in the Federal Act, which would make the state law consistent.

Vote: Motion carried unanimously.

Motion/Vote: **REP. MESSMORE MOVED HB 389 DO PASS AS AMENDED.** Motion carried unanimously.

## EXECUTIVE ACTION ON HB 260

Motion: **REP. STICKNEY MOVED HB 260 DO PASS.**

Motion: **REP. S. RICE** moved to amend HB 260. **EXHIBIT 20**

Discussion:

**REP. BECKER** asked what does 40-8-103, MCA cover. **David Niss** stated that placement for adoption means the transfer of physical

**HOUSE OF REPRESENTATIVES**

**HUMAN SERVICES AND AGING COMMITTEE**

**ROLL CALL** **DATE** 2-4-91

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. ANGELA RUSSELL, CHAIR | ✓ | | |
| REP. TIM WHALEN, VICE-CHAIR | ✓ | | |
| REP. ARLENE BECKER | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. JAN BROWN | ✓ | | |
| REP. BRENT CROMLEY | ✓ | | |
| REP. TIM DOWELL | ✓ | | |
| REP. PATRICK GALVIN | ✓ | | |
| REP. STELLA JEAN HANSEN | ✓ | | |
| REP. ROYAL JOHNSON | ✓ | | |
| REP. BETTY LOU KASTEN | ✓ | | |
| REP. THOMAS LEE | ✓ | | |
| REP. CHARLOTTE MESSMORE | ✓ | | |
| REP. JIM RICE | ✓ | | |
| REP. SHEILA RICE | ✓ | | |
| REP. WILBUR SPRING | ✓ | | |
| REP. CAROLYN SQUIRES | ✓ | | |
| REP. JESSICA STICKNEY | ✓ | | |
| REP. BILL STRIZICH | ✓ | | |
| REP. ROLPH TUNBY | ✓ | | |
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CS05HUMSER.MAN

8:10 am
2/5/91

# HOUSE STANDING COMMITTEE REPORT

February 5, 1991
Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 389 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:
1. Page 5, line 8.
Following: the period
Insert: "Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation."

2.
Following: the period
Insert: "Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation."

HOUSE BILL NO. 389

INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation.





BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 49-2-101, MCA, is amended to read:

"**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is

required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.





(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.~~

~~(14)~~(13) "National origin" means ancestry.

~~(15)~~(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

~~(16)~~(15) (a) "Physical or mental handicap" means:

(i) a physical ~~disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or~~ device or mental impairment that substantially limits one or

more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. ANY ACCOMMODATION THAT WOULD REQUIRE AN UNDUE HARDSHIP OR THAT WOULD ENDANGER THE HEALTH OR SAFETY OF ANY PERSON IS NOT A REASONABLE ACCOMMODATION.

~~(17)~~(16) (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves





that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(17)~~(16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

~~(18)~~(17) "Staff" or "commission staff" means the staff of the commission for human rights."

**Section 2.** Section 49-3-101, MCA, is amended to read:

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~~(5)~~(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or





(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

~~(6)~~(5) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

-End-

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-JOANN BIRD

| BILL NO | REFER DATE | HEARING DATE | CONSIDERATION DATES | COMMITTEE ACTION | REREFERRED TO COMM | DATE OUT |
|---|---|---|---|---|---|---|
| HB0333 | 2/09 | 3/11 | | CONCUR AS AMENDED | | 3/12 |
| BROOKE, VIVIAN | | | REVISE PAROLE ELIGIBILITY | | | |
| HB0353 | 2/09 | 3/26 | | CONCUR | | 4/01 |
| STRIZICH, BILL | | | SUBMIT CONSTITUTIONAL AMEND. TO THE PEOPLE TO CLARIFY JUDICIAL SELECTION | | | |
| HB0379 | 2/09 | 3/11 | | CONCUR AS AMENDED | | 3/12 |
| BROOKE, VIVIAN | | | GOOD TIME CREDIT FOR PAROLEES | | | |
| HB0388 | 2/13 | 3/05 | | TABLED ON 03/16 | | |
| STICKNEY, JESSICA | | | CLARIFY THAT PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION | | | |
| HB0389 | 2/12 | 3/05 | | CONCUR | | 3/05 |
| GOULD, BUDD | | | AMEND HANDICAP DISCRIMINATION DEFINITIONS TO CONFORM TO FEDERAL LAW | | | |
| HB0391 | 2/16 | 3/08 | | CONCUR AS AMENDED | | 3/16 |
| DARKO, PAULA | | | CLERGY TO REPORT CHILD ABUSE | | | |
| HB0405 | 2/18 | 3/15 | | CONCUR | | 3/23 |
| WALLIN, NORM | | | EXTEND PHYSICIAN LIENS TO PAYMENTS DUE FROM HEALTH SERVICE CORPORATIONS | | | |
| HB0417 | 2/26 | 3/27 | | CONCUR AS AMENDED | | 4/01 |
| ELLIOTT, JIM | | | PROHIBIT ACTIVITIES DESIGNED TO FURTHER CIVIL DISORDER | | | |
| HB0419 | 2/12 | 3/19 | | CONCUR AS AMENDED | | 3/20 |
| MERCER, JOHN | | | DELETE USE OF CERTIFIED MAIL FOR DENIAL OF TORT CLAIMS | | | |
| HB0420 | 2/20 | 3/14 | | CONCUR | | 3/14 |
| RICE, JIM | | | COMPELLED TESTIMONY IMMUNITY IN COMMISSIONER OF INSURANCE PROCEEDINGS | | | |
| HB0421 | 2/27 | 3/19 | | CONCUR | | 3/19 |
| HOFFMAN, DAVID | | | CLARIFY CERTIFICATION AND TRAINING OF LIMITED JURISDICTION JUDGES | | | |

23

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

**Call to Order:** By Chairman Dick Pinsoneault, on March 5, 1991, at 10:00 a.m.

ROLL CALL

**Members Present:**
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

**Members Excused:** none

**Staff Present:** Valencia Lane (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:**

HEARING ON HOUSE BILL 389

**Presentation and Opening Statement by Sponsor:**

Representative Bud Gould, District 61, said HB 389 would change Montana law to comply with the passage of the Federal American Disabilities Act of 1990. He advised the Committee that the bill was drafted at the request of the Human Rights Commission, a "504 compliance agency".

**Proponents' Testimony:**

Anne MacIntyre, Administrator, Human Rights Commission (HRC), told the Committee that Title 7 (1974), did not prohibit discrimination on the basis of handicap, and that rehabilitation applied only to federal discrimination laws. She said Montana had to form its own handicapped legislation which is more broad than

the federal law. Ms. MacIntyre stated that mental and physical handicaps were deleted from Chapter 3, and federal language was used. She advised the Committee she did not propose to replace "handicap" with "disability", and explained that handicap applies to a situation affecting a major life activity.

Opponents' Testimony:

There were no opponents of HB 389.

Questions From Committee Members:

Chairman Pinsoneault asked why "major life activity" was not in the bill. Anne MacIntyre replied it is not in federal law either.

Chairman Pinsoneault commented that it would be helpful to define "major life activity" in the bill, and to amend page 5 to state "any accommodation resulting in undue hardship". Anne MacIntyre replied, "it would be expensive to put elevators in accommodations and that would present an undue hardship".

Chairman Pinsoneault asked how a landlord could assess mental handicap in renting to a person who might have a history of violence. Ms. MacIntyre replied that, in this example, it would be appropriate to check references. She said destruction of property could be a valid reason for not renting to someone in this instance.

Senator Towe asked about "impairment" language. Anne MacIntyre replied it pertains to those who have been impaired, and are no longer impaired, but may be discriminated against because of it. She cited an example of an employer who did not hire an applicant because of epilepsy which was brought under control.

Senator Towe asked if this same language were in federal law, and commented that it reads a little awkward.

Closing by Sponsor:

Representative Gould requested that Senator Yellowtail carry HB 389, and said he believes it is important to update the law in this area.

## HEARING ON HOUSE BILL 388

Presentation and Opening Statement by Sponsor:

Representative Jessica Stickney, District 26, said HB 388 ensures that state and federal statutes prohibiting discrimination on the basis of sex are interpreted in the same manner with regard to pregnancy. She explained that Congress changed its language in

## EXECUTIVE ACTION ON HOUSE BILL 389

**Motion:**

**Discussion:**

There was no discussion.

**Amendments, Discussion, and Votes:**

There were no amendments.

**Recommendation and Vote:**

Senator Harp made a motion that HB 389 BE CONCURRED IN. The motion carried with all members voting aye except Senator Grosfield who voted no.

## ADJOURNMENT

**Adjournment At:** 11:57 a.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1990 Date 5 Mar 91

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Sen. Pinsoneault | ✓ | | |
| Sen. Yellowtail | ✓ | | |
| Sen. Brown | ✓ | | |
| Sen. Crippen | ✓ | | |
| Sen. Doherty | ✓ | | |
| Sen. Grosfield | ✓ | | |
| Sen. Halligan | ✓ | | |
| Sen. Harp | ✓ | | |
| Sen. Mazurek | ✓ | | |
| Sen. Rye | ✓ | | |
| Sen. Svrcek | ✓ | | |
| Sen. Towe | ✓ | | |
| | | | |
| | | | |
| | | | |

Each day attach to minutes.

EXHIBIT #1
HB 389
3-5-91

Testimony of Anne L. MacIntyre
Administrator, Human Rights Commission
In support of House Bill 389
Senate Judiciary Committee
March 5, 1991

The Human Rights Act was enacted in 1974 and was modelled after Title VII of the Civil Rights Act of 1964, as amended. In 1974, Title VII did not prohibit discrimination on the basis of handicap. In fact, the first major piece of federal legislation on the question of handicap discrimination, the Rehabilitation Act of 1973, had only just been enacted. The Rehabilitation Act, however, applied only to the federal government and contractors and grantees of the federal government. As a result, the Montana legislature in developing the Human Rights Act did not have any commonly accepted or developed definitions to look to in fashioning its prohibition against discrimination on the basis of handicap.

In the opinion of the Commission staff, the present statutory definitions are overbroad and inconsistent with federal law and should be amended to achieve consistency. Further, the statutes do not contain the specific statutory requirement of reasonable accommodation for handicaps contained in federal law. Although a reasonable accommodation requirement may be inferred from the present statutory language, the Commission believes a statutory clarification is appropriate.

The bill proposes to delete the statutory definitions of "mental handicap" and "physical handicap" in both chapters 2 and 3 of Title 49 and add definitions similar to the definitions contained in the Rehabilitation Act and the more recent federal enactments on handicap discrimination, the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990. Even though the Americans with Disabilities Act uses the term "disability" instead of "handicap", the other federal laws use the term "handicap", as the Montana law has done since 1974. Thus, we have not proposed to replace the term "handicap" with "disability."

The new definition of physical or mental handicap provides that a handicap is "a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of such an impairment, or a condition regarded as such an impairment." The term major life activities is used in the federal law to denote functions such as caring for oneself, walking, seeing, hearing, speaking, and working. Under the portions of the definition referring to "a record of such an impairment" or "a condition regarded as an impairment," a cured cancer victim or an individual with a disfigurement or a person who is erroneously regarded as having a condition like epilepsy would also be protected by the statute.

Finally, the bill includes a requirement of reasonable accommodation within the definition to insure that when discrimination on the basis of handicap is prohibited, the failure to make reasonable accommodation constitutes a discriminatory practice. In the employment context, reasonable accommodation can include making existing facilities readily accessible, modifying work schedules, job restructuring, reassigning to vacant positions, and so on.

# SENATE STANDING COMMITTEE REPORT


March 5, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No.389 (third reading copy -- blue), respectfully report that House Bill No.389 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

3-5-91
Amd. Coord.

SB 3-5 12:40
Sec. of Senate

471232SC.Sji

DATE 3/5/91

COMMITTEE ON Judiciary

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| [illegible] | MONT Assn Life Underw | HB388 | | ✓ |
| LARRY AKEY | MT ASSOC OF LIFE UNDERWRITERS | HB388 | | ✓ |
| HARLEY WARNER | MT. ASS OF CHURCHES | HB 388 HB 493 | ✓ | ✓ |
| Budd Gould | Self | HB389 | ✓ | |
| Dave Barnhill | Insurance dept. | HB 388 | ✓ | |
| Paul Frantz | | HB439 | ✓ | |
| Lynda Saul | ICCU | HB388 | ✓ | |
| Anne MacIntyre | Human Rights Comm | HB 388, HB 389, HB 493 | ✓ | HB 493 |
| Michael Sherwood | MTEA | HB439 | ✓ | |
| Tom Hopgood | Health Ins Assoc America | HB388 | | ✓ |
| Diane Sands | Mt Women Lobby | HB388 | ✓ | |
| John Fitzpatrick | Pegasus G. U. Corp | HB493 | | ✓ |
| Doug Lowney | MT Assoc Life Underwriters/Self | 388 | | ✓ |
| Leonard O. Sanders | Nat'l Assoc. Life Underwriters | HB 388 | | ✓ |
| Ken Tabb | Mt Human Rights Network | HB 493 | | ✓ |
| Riley Johnson | NFIB | 388 | | ✓ |
| Denis Logal | US WEST Comm | 493 | | ✓ |
| Tilery H. Schramm | MT. Univ System | HB 493 | | ✓ |
| Scott Crichton | ACLU | HB493 | ✓ | |
| Scott Crichton | ACLU | HB 388 | ✓ | |
| CONRAD STEBBE | [illegible] | 71 | | |
| Bryan Asay | MT Biblical Legal Found | HB391 | | ✓ |
| Ken Peterson | Church of Jesus Christ of LDS | HB391 | | ✓ |
| Sandy Wimmer | Youth Service Alt. Coun. | HB109 | ✓ | |
| Jim Smith | Blue Sky Schools | HJ12 | | ✓ |
| GEORGE OCHENSKI | SELF | Karla Gray | ✓ | |

(Please leave with Secretary)

**SENATE COMMITTEE OF THE WHOLE AMENDMENT**

March 6, 1991 1:15 pm

Mr. Chairman: I move to amend House Bill No. 389 (third reading copy -- blue) as follows:

1. Page 3, line 21.
Following: "association,"
Insert: "credit union,"

ADOPT

REJECT

Signed: Steve Doherty
Senator Doherty

3-6-91
Amd. Coord.

SB 3/6 1:55
Sec. of Senate

SENATE
HB 389 32

HOUSE BILL NO. 389

INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

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REFERENCE BILL

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(b) Public accommodation does not include an





institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(17)~~(16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

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-End-